NOTES OF CASES.

Proof of Value.—Morrow Transfer Co. *v.* Robinson. (No. 2,788.) Court of Appeals of Georgia. Nov. 11, 1910. Syllabus by the Court. Value, whether actual or as regulated by the market, is largely a matter of individual estimate or opinion, and liberality should be allowed in the introduction of testimony to prove value. There are many elements and tests of value. Proof of cost, condition of the property when lost, value of similar property, prices at which similar articles are sold, uses to which the property is adapted, opinions of experienced dealers in such property, and opinions of experts, all have more or less probative value; and, in short, any testimony, direct or circumstantial, which tends to throw light on the subject, and which would enable the jury to arrive at a fair conclusion, is admissible as evidence in proof of value. Peterson *v.* State, 6 Ga. App. 491, 65 S. E. 311; Atlanta Baggage & Cab Co. *v.* Mizo, 4 Ga. App. 407, 61 S. E. 844; Atlantic Coast Line R. Co. *v.* Harris, 1 Ga. App. 667, 57 S. E. 1030; 16 Cyc. 1133, 1139, 1140, 1141.

Martin *v.* Martin, 68 S. E. 1095. Supreme Court of Georgia. Sept. 24, 1910, Syllabus by the Court. On the trial of an issue involving the value in bulk of a stock of merchandise and books of account and choses in action, the opinions of witnesses as to the value of the property are not conclusive upon the jury. Bonds *v.* Brown, 133 Ga. 451, 66 S. E. 156; Jennings *v.* Stripling, 127 Ga. 778 (3) 56 S. E. 1026, and citations; Minchew *v.* Manhunta Lumber Co., 5 Ga. App. 154, 62 S. E. 716.

What Is an Original Promise under Statute of Frauds.—Mize *v.* Mashburn. (No. 2,774.) Court of Apeals of Georgia, Nov. 11, 1910. Syllabus by the Court. Young owed Mashburn an account for $13.20, and Mize agreed with both Mashburn and Young that he (Mize) would pay this debt to Mashburn provided Young would work for Mize until he had earned a sufficient sum to pay the debt. In pursuance of this agreement Young did work for Mize until Mize owed him enough to pay his debt to Mashburn. Held, that the promise of Mize to pay Young's debt was not within the statute of frauds, but by agreement Mize became the debtor by substitution, and Young had fully performed. Howell *v.* Field, 70 Ga. 592 (1); Bohannon *v.* Jones, 30 Ga. 488; Anderson *v.* Tucker & Whitehead, 55 Ga. 278.

Proof of Other Crimes.—Lee *v.* State. (No. 2,858.) Court of Appeals of Georgia. No. 11, 1910. Syllabus by the Court. While the general rule is that proof of other crimes committed by the defendant is not admissible in a criminal prosecution, still the general rule has many general exceptions. Proof of other crimes is never admissible

(except in cases where the defendant has himself put his character in issue) where its chief or only probative value consists in showing that the defendant is, by reason of his bad character (demonstrated through a criminal career), more likely to have committed the crime than he otherwise would have been. To admit such evidence, it must have relevancy and probative value from some other point of view. Where knowledge, motive, intent, good or bad faith, and other matters dependent upon a person's state of mind are involved as a material element in a particular criminal offense for which a defendant is on trial, and the defendant has engaged in a course of conduct or done other acts at or about the same time the act in question was committed, and these other transactions are such as to illustrate the state of the defendant's mind on the subject involved, proof of them may be received, though one or more of the separate acts of which this collateral conduct consists may be criminal. Where a practicing physician is charged with having prescribed cocaine for an habitual user of the drug, not in good faith believing it to be necessary for the proper treatment of the case, but in evasion of the act of August 22, 1907 (Laws Ga. 1907, p. 121), the prosecution may, in order to prove his state of mind at the time of the particular transaction charged in the indictment, show that during the same general period of time the defendant made a common practice of furnishing such prescriptions to other persons for whose treatment the drug was not deemed necessary, and that he furnished the prescriptions in such numbers and in such a way as to negative his good faith. Though the defendant may have been tried for violating the law as to one or more of these transactions with other patients, and acquitted, the state may, nevertheless, prove the facts connected with them, for the purpose of illustrating the defendant's state of mind as to the transaction at bar.

Landlords and Immoral Contracts.—In a case before the Divisional Court last Saturday (Upfill *v.* Wright) it became necessary to decide whether the rule Ex turpi causa non oritur actio applied to a contract of tenancy. The plaintiff, through an agent, let a flat to a person whom the agent knew to be a kept woman. The agent also knew that the flat was to be used for the purpose of receiving "one H.," and that the rent would be paid by him through his mistress. On being sued for the rent in the County Court the defendant, the mistress, set up these facts as an answer to the claim. The County Court judge found for the plaintiff, considering that the case was not governed by Pearce *v.* Brooks (1866), in which it was held that a claim for the hire of a brougham lent to a known prostitute for the purpose of her calling could not be enforced. The Divisional Court King's Bench Division Dec. 17, 1910 (Mr. Justice Darling and Mr. Justice Bucknill) allowed the appeal, holding that on the facts it was clear that the flat was let with knowledge that it was to be used for